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4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

SATS No. AK-007-FOR; Docket ID OSM-2011-0017

Alaska Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Alaska regulatory program (hereinafter, the "Alaska program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Alaska intends to revise its rules to be consistent with the corresponding Federal regulations and to conform to the drafting manual for the State of Alaska.

This document gives the times and locations that the Alaska program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., m.d.t. [Insert date 30 days after date of publication in the Federal Register]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the Federal Register]. We will accept requests to speak until 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the Federal Register].

**ADDRESSES:** You may submit comments by either of the following two methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). This proposed rule has been assigned Docket ID: OSM-2011-0017. If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and follow the instructions.

- Mail/Hand Delivery/Courier:

Kenneth Walker, Chief

Denver Field Division

Office of Surface Mining Reclamation and Enforcement

1999 Broadway, Suite 3320

Denver, Colorado 80201-3050

For detailed instructions on submitting comments and additional information on the rulemaking process, see the "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at [www.regulations.gov](http://www.regulations.gov), you may review copies of the Alaska program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Denver Office.

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**FOR FURTHER INFORMATION CONTACT:** Kenneth Walker, Telephone:

303-293-5012. Internet: [kwalker@osmre.gov](mailto:kwalker@osmre.gov)

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Alaska Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Alaska Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alaska program on March 23, 1983. You can find background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program in the March 23, 1983, Federal Register (48 FR 12274). You can also find later actions concerning Alaska's program and program amendments at 30 CFR 902.15 and 902.16.

## **II. Description of the Proposed Amendment**

By letter dated September 8, 2011, Alaska sent us a proposed amendment to its program (Administrative Record Document ID No. OSM-2011-0017 under SMCRA (30 U.S.C. 1201 et seq.). Alaska sent the amendment to include changes made at its own initiative and

in response to the required program amendment at 30 CFR 902.16(a)(14). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

The provisions of the Alaska program that Alaska proposes to revise are: 11 Alaska Annotated Code (AAC) 90.043(b), concerning water quality analyses; 11 AAC 90.045(a), (b), (c), and (d), concerning description of geology; 11 AAC 90.057(a), (b), and (c), concerning fish and wildlife information; 11 AAC 90.085(a) and (e), concerning a plan for protection of hydrologic balance; 11 AAC 90.089(a)(1), concerning construction plans for ponds, impoundments, dams, and embankments; 11 AAC 90.101(a) through (f), concerning a subsidence control plan and the definition of material damage; 11 AAC 90.173(b), concerning eligibility for assistance under the small operator assistance program; 11 AAC 90.179(a) and (b), concerning data collection that would be covered by the small operator assistance program; 11 AAC 90.185(a), concerning applicant liability under the small operator assistance program; 11 AAC 90.201(d), concerning the requirement to file a reclamation bond; 11 AAC 90.211(a), concerning bond release procedures and criteria; 11 AAC 90.321(d), (e), and (f), concerning replacement of water supplies affected by underground mining activities; 11 AAC 90.323(a),

concerning water quality standards; 11 AAC 90.323(b), concerning sediment control measures; 11 AAC 90.325(b) and (c) and 11 AAC 90.327(b), concerning stream channel diversions; 11 AAC 90.331(d), concerning sedimentation ponds; 11 AAC 90.331(e), concerning removal of siltation structures; 11 AAC 90.331(h), concerning the design of other treatment facilities; 11 AAC 90.336(a), (b), (f), and (g), concerning impoundment design and construction; 11 AAC 90.337(a), concerning impoundment inspection; 11 AAC 90.345(e), concerning requirements for surface water monitoring; 11 AAC 90.349, concerning discharges of water or coal mine waste into an underground mine working; 11 AAC 90.375(f) and (g), concerning public notice of blasting; 11 AAC 90.391(n) and (t), concerning disposal of excess spoil or coal mine waste; 11 AAC 90.395(a), concerning general requirements for coal mine waste; 11 AAC 90.397(a), concerning inspections of disposal areas for excess spoil, underground development waste or coal processing waste; 11 AAC 90.401(a), (b), (d), (e), and (f), concerning construction plans for coal mine waste refuse piles; 11 AAC 90.407(c) and (f), concerning coal mine waste dams or embankments; 11 AAC 90.423(h), concerning protection of fish and wildlife; 11 AAC 90.443(a), (k), (l), and (m), concerning requirements for backfilling and grading; 11 AAC 90.444(a) and (b), concerning requirements for backfilling and grading where there is thick or thin overburden; 11 AAC 90.447(c), concerning

requirements for auger mining; 11 AAC 90.457(c), concerning standards for revegetation success on areas to be developed for fish and wildlife habitat, recreation, undeveloped land, or forest products; 11 AAC 90.461(b), (g), (h), (i), (j), (k), and (l), concerning subsidence control; 11 AAC 90.491(f), concerning the requirements for construction and maintenance of roads; 11 AAC 90.601(h), (i) and (j), concerning inspections of abandoned sites; 11 AAC 90.629(a), concerning procedures for assessment conference; 11 AAC 90.631(a), concerning violations and requests for a public hearing; 11 AAC 90.635(a) and (b), concerning when an individual civil penalty may be assessed; 11 AAC 90.637(a) and (b), concerning the amount of individual civil penalty; 11 AAC 90.639(a), (b), and (c), concerning procedures for assessment of an individual civil penalty; 11 AAC 90.641(a), (b), (c), and (d), concerning payments of an individual civil penalty; 11 AAC 90.652 through 11 AAC 90.669, concerning requirements for incidental mining of coal; 11 AAC 90.701(a), (b), and (c), concerning the filing of a petition to designate lands as unsuitable for surface coal mining operations; 11 AAC 90.901(a), concerning the applicability of Alaska's rules to all coal exploration and surface coal mining and reclamation operations; 11 AAC 90.911(125), concerning the definition of "community or institutional building;" 11 AAC 90.911(126), concerning the definition of "cumulative impact area;" 11 AAC 90.911(128),



concerning the definition of "other minerals;" 11 AAC 90.911(129), concerning the definition of "other treatment facility;" 11 AAC 90.911(130), concerning the definition of "precipitation event;" 11 AAC 90.911(133), concerning the definition of "registered professional engineer;" 11 AAC 90.911(134), concerning the definition of "registered professional land surveyor;" and 11 AAC 90.911(135), concerning the definition of "siltation structure."

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Alaska program.

#### Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of

SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

#### Public Availability of Comments:

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be made publicly available in the electronic docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov). While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t.

on [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting

by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ASSRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### **IV. Procedural Determinations**

##### Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

September 14, 2011

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Allen D. Klein

Director, Western Region

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Date

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